

11/20/01

**THIS DISPOSITION  
IS NOT CITABLE AS PRECEDENT  
OF THE T.T.A.B.**

Paper No. 14  
PTH

UNITED STATES PATENT AND TRADEMARK OFFICE

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Trademark Trial and Appeal Board

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In re S.S. Dweck & Sons, Inc.

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Serial No. 75/643,218

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Ezra Sutton for S.S. Dweck & Sons, Inc.

Rebecca A. Smith, Trademark Examining Attorney, Law Office  
110 (Chris Pederson, Managing Attorney).

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Before Cissel, Hairston and Bucher, Administrative  
Trademark Judges.

Opinion by Hairston, Administrative Trademark Judge:

S.S. Dweck and Sons, Inc. has filed an application to  
register the mark shown below,

for goods identified, following amendment as:

lamps in class 11;

household sponges, scrub brushes, cleaning brushes for the toilet and shower, exfoliator brushes, trash cans, drinking glasses, toothbrush holders, facial tissue holders, bathroom tissue holders and soap dishes in class 21;

bedspreads, blankets, sheets, cotton placemats, cotton tablecloths, dishcloths, washcloths, towels, oven mitts, pot holders, and shower curtains in class 24; and

floor mats for vehicles, textile floor mats for use in the home, rugs, and rubber tub mats in class 27.<sup>1</sup>

The Trademark Examining Attorney has refused registration under Section 2(d) of the Trademark Act, in view of two prior registrations, both owned by the same entity, for the mark STEPHEN DWECK. Registration No. 1,784,692, issued July 27, 1993 (Section 8 & 15 affidavit filed) covers "pillows and furniture; comforters, bed sheets, table linens, towels, and fabrics; carpeting, area rugs, and wall paper; and lamps"; and Registration No. 1,734,413, issued November 24, 1992 (Section 8 & 15 affidavit filed) covers "silver cutlery, namely, forks, spoons, and knives;

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<sup>1</sup> Serial No. 75/643,218, filed February 18, 1999, alleging first use and first use in commerce in 1929. The words "BRAND" and "FINE IMPORTS" have been disclaimed apart from the mark as shown.

silver vases, silver candle holders, silver picture frames, silver trays, silver jewelry boxes, silver plates, silver bowls, and silver salt shakers; wooden jewelry boxes and trays and picture frames with silver ornamentation and glass picture frames; china dinnerware, namely, plates, cups saucers, and bowls; mother of pearl dishes, glass vases, platters, bowls, and candlestick holders; crystal vases, platters, bowls, and candlestick holders, drinking glasses, namely, stemware, bar glassware and beverage glassware; and leather belts and buckles."

When the Examining Attorney made the refusal final, applicant appealed. Both applicant and the Examining Attorney filed briefs, but an oral hearing was not requested. We affirm the refusal.

Our determination under Section 2(d) is based on an analysis of all of the probative facts in evidence that are relevant to the factors bearing on the likelihood of confusion issue. See *In re E. I. du Pont de Nemours and Co.*, 476 F.2d 1357, 177 USPQ 563 (CCPA 1973). In any likelihood of confusion analysis, two key factors are the similarities between the marks and the similarities between the goods. *Federated Foods, Inc. v. Fort Howard Paper Co.*, 544 F.2d 1098, 192 USPQ 24 (CCPA 1976).

Turning first to the goods, certain of applicant's and registrant's houseware items are identical, i.e., drinking glasses, table linens, sheets, towels, and rugs. Others are closely related, e.g., applicant's bedspreads and blankets and registrant's pillows and comforters. Applicant does not dispute this, but concentrates its arguments on asserted differences in the marks.

Applicant argues that its mark is very different from the registrant's mark because the dominant portion of its mark is STEAMSHIP BRAND and because its mark includes a prominent and distinctive design. Applicant maintains that the term "DWECK" is a minor portion of its mark. Further, applicant argues that its mark has been in use since 1929 and has co-existed with registrant's mark since 1984 without any instances of actual confusion.

The Examining Attorney, on the other hand, argues that the marks are highly similar. In particular, the Examining Attorney argues that the most dominant portion of applicant's mark is the wording, and that the most dominant term within the wording is "DWECK," which is very similar to registrant's mark STEPHEN DWECK. Further, the Examining Attorney argues that DWECK is a distinctive term and that consumers who are familiar with registrant's mark STEPHEN

DWECK would be likely to believe that applicant's mark is a variant of registrant's mark.

In considering the marks, we are mindful of the well-established principle that when marks appear on identical goods, the degree of similarity necessary to support a conclusion of likely confusion declines. *Century 21 Real Estate Corp. v. Century Life of America*, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992). Moreover, while marks must be compared in their entireties, it is nevertheless the case that, in articulating reasons for reaching a conclusion on the issue of likelihood of confusion, "there is nothing wrong in stating that, for rational reasons, more or less weight has been given to a particular feature of a mark, provided [that] the ultimate conclusion rests on a consideration of the marks in their entireties." *In re National Data Corp.*, 753 F.2d 1056, 324 USPQ 749, 751. For instance, "that a particular feature is descriptive or generic with respect to the involved goods or services is one commonly accepted rationale for giving less weight to a portion of a mark . . . ." 224 USPQ at 751.

In this case, we recognize that the steamship design and the wording STEAM-SHIP BRAND are prominent features in applicant's mark. However, it is the term DWECK, in the phrase FINE IMPORTS BY DWECK, that conveys to purchasers

and prospective purchasers the source of applicant's goods. Thus, it is proper to give more weight to the term DWECK because it is the principal source-signifying portion of applicant's mark. We should add that the words "BRAND" and "FINE IMPORTS" are entitled to little weight in our likelihood of confusion analysis because they are descriptive with respect to the goods. Thus, when we compare the marks in their entirety, we find that they engender highly similar commercial impressions. We must keep in mind the normal fallibility of human memory over time and the fact that the average consumer retains a general, rather than a specific, impression of trademarks encountered in the marketplace. This is especially important here where consumers are likely to remember the DWECK portion of both marks because of its uniqueness.

Applicant's assertion that it is unaware of any instances of actual confusion despite approximately fifteen years of concurrent use of the marks by applicant and registrant does not persuade us that no likelihood of confusion exists in this case. We cannot determine on this record that there has been any meaningful opportunity for actual confusion to have occurred in the marketplace, and accordingly we cannot conclude that the alleged absence of

actual confusion is entitled to significant weight in our likelihood of confusion analysis in this case.

In sum, we conclude that purchasers and prospective purchasers familiar with registrant's STEPHEN DWECK mark for houseware items would be likely to assume, upon encountering applicant's highly similar mark STEAM-SHIP BRAND FINE IMPORTS BY DWECK and design for identical and closely related houseware items, that the goods sold thereunder emanate from, or are sponsored by or affiliated with, the same source.

**Decision:** The refusal to register under Section 2(d) of the Trademark Act is affirmed as to each of the cited registrations.